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Report of the Joint Inspection Unit on the Administration of Justice at the United Nations

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the report of the Joint Inspection Unit entitled "Administration of justice at the United Nations" (JIU/REP/2000/1).

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ADMINISTRATION OF JUSTICE AT THE UNITED NATIONS

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ACRONYMS

ACC	Administrative Committee on Coordination
AMS	Administrative Management Service (United Nations)
DM	Department of Management (United Nations)
FICSA	Federation of International Civil Servants' Associations
IBRD	International Bank for Reconstruction and Development
ICSAB	International Civil Service Advisory Board
ICJ	International Court of Justice
ICSC	International Civil Service Commission
ILO	International Labour Organization
ILOAT	International Labour Organization Administrative Tribunal
IMF	International Monetary Fund
JAB	Joint Appeals Board (United Nations)
JDC	Joint Disciplinary Committee (United Nations)
JIU	Joint Inspection Unit
OAS	Organization of American States
OECD	Organization for Economic Cooperation and Development
OHRM	Office for Human Resources Management (United Nations)
OIOS	Office of Internal Oversight (United Nations)
OLA	Office of Legal Affairs (United Nations)
UN	United Nations
UNAT	United Nations Administrative Tribunal
UNDP	United Nations Development Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNFPA	United Nations Population Fund
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNOG	United Nations Office at Geneva
UNON	United Nations Office at Nairobi
UNOPS	United Nations Office for Project Services
UNOV	United Nations Office at Vienna

EXECUTIVE SUMMARY

OBJECTIVE:

The main objective of the present report is to review the United Nations administration of justice machinery from its legal foundation (Charter of the United Nations, staff regulations and rules, administrative instructions, procedures and so forth) to its functioning and impact, including the various bodies dealing with the administration of justice. The review is aimed at helping to clarify the current administration of justice system and providing concrete recommendations to adjust it to the new management requirements. It also would serve as a solid basis for accountability and oversight in the United Nations by making administration-of-justice tools clear and transparent. [1]

The present report deals only with the administration of justice at the United Nations. During the preparation of the report, however, the Inspectors acquainted themselves with the various systems of administration of justice obtaining at organizations throughout the United Nations system as a whole. In evaluating the information available to them, the Inspectors have reached the conclusion that, while their present mandate concerns exclusively one organization, the issue demands further consideration from a global, system-wide perspective, particularly as regards the highest instances of appeal in respect of decisions of the lower judicial and semi-judicial bodies.

The Inspectors have found that, not unlike similar domestic systems, the system for administration of justice at the United Nations is slow, costly and cumbersome. It also appears to be, in several significant ways, far less effective than it could or should be.

In short, the administration of justice at the United Nations features some informal procedures and two stages of formal recourse. The first stage takes place before internal joint bodies whose role is advisory only; the second stage, before an Administrative Tribunal whose decisions are binding.

It is quite apparent that the General Assembly, which has issued the Staff Regulations governing the administration of justice, has devised the first stage of recourse as the review of staff members' claims by a body composed of their peers. There are many legal systems which include specialised bodies which examine cases from the perspective of a cohesive group. It is undoubtedly within this framework that the Assembly has intended that the Secretary-General should profit from staff advice in the disposition of cases involving staff. The Inspectors note, however, that a comparatively high proportion of all recommendations of these bodies - including unanimous recommendations - are rejected by the administrations.

The Inspectors express the hope that this trend will be arrested and, in time, reversed. Staff participating in the deliberations of these internal bodies - whether as members or counsel - spend considerable time and energy in this task, often carried out on their own time. To this substantial investment should be added the human and other resources assigned by the Organization to support these bodies and to represent the administration before them. It is to be deplored that there should be so many cases where the advice of these bodies is rejected and their deliberations serve only to add one year or two to the procedure before

referring it for decision to the second recourse stage - the Administrative Tribunal. The present flaws in the administration of justice at the United Nations are compounded by the special characteristics of the international civil service, which is not subject to any domestic legal system and, for this reason, may fail to benefit from the most dynamic labour legislation developments. In this context, the Inspectors take note of the fact that important international instruments such as the Universal Declaration of Human Rights, the Human Rights Covenants and the 1998 Geneva International Labour Organization (ILO) Declaration on Fundamental Principles and Rights at Work are not incorporated into the United Nations internal regulations and rules.

Four major issues relating to this subject were identified by the Inspectors:

- the need to enhance informal conciliation, mediation and negotiation instances prior to the institution of formalized procedures. Few efforts appear to be made at this time effectively to resolve disputes before they are formalised before the appellate bodies. The creation of a function of *Ombudsman* is envisaged in this context.

- the independence of the Secretariats of the Joint Appeals Board (JAB) and the Joint Disciplinary Committee (JDC) and of the Administrative Tribunal (UNAT). At present, the Secretariat of JAB and JDC is located in the Office of the Under Secretary-General for Management and the Secretariat of UNAT in the Office of Legal Affairs. The creation of an office reporting directly to the Executive Office of the Secretary-General and comprising both secretariats and other related offices would greatly contribute to enhancing the image and credibility of the internal administration of justice.

- the establishment of a higher recourse instance in respect of UNAT decisions involving, in particular, Charter and other constitutional issues. As stated above, further recommendations along these lines can only be formulated in the context of a system-wide report prepared in consultation with all participating organizations and with their full cooperation.

- proper legal advice and representation for staff, who are at a disadvantage in this respect as compared with the administration.

In this report, the Inspectors also address other significant questions such as the accountability and responsibility of managers and other staff, the use of clear, concise language in administrative issuances and the access of field-based staff to recourse instances.

CONCLUSIONS AND RECOMMENDATIONS

Recommendation 1: Creation of an Office for the Settlement of Disputes and the Administration of Justice

To increase the independence of the system of administration of justice at the United Nations, an Office for the Settlement of Disputes and the Administration of Justice should be created reporting to the Executive Office of the Secretary-General. The Office should comprise: an *Ombudsman* Function; the Secretariat of the Administrative Tribunal; the Secretariat of the Joint Appeals Board and the Committee for Professional Responsibility (established to replace the Joint Disciplinary Committee); and the Office of the Coordinator of the Panel of Counsel.

Recommendation 2: Creation of an *Ombudsman* Function.

To strengthen the system's capability for informal conciliation, mediation and negotiation, an *Ombudsman* function should be created to replace the Panel on Discrimination and other Grievances. This function would be part of the Office for the Settlement of Disputes and the Administration of Justice,. The *Ombudsman* should be an independent official at the senior level appointed by the Secretary-General, in consultation with the staff representatives, for a single, non-renewable five-year term. The access of staff members at all duty stations to the *Ombudsman* should be ensured at all times. In addition, the *Ombudsman* will be assisted at each duty station by a person or a panel, appointed on a part-time basis, whose work the *Ombudsman* will coordinate.

Recommendation 3: United Nations Administrative Tribunal

(a) Article 9 of the Statute of the Administrative Tribunal should be amended to eliminate present restrictions on the Tribunal's authority. When the Tribunal considers the application to be well-founded, it should have full powers to order the rescinding of the decision contested or the specific performance of the obligation invoked. Furthermore, the Tribunal alone should decide on the appropriate amount of compensation to be paid.

(b) Member States nominating candidates for the Administrative Tribunal are urged to make every effort to ensure that their candidates possess high professional qualifications and relevant experience, preferably in the judiciary.

(c) Bearing in mind the ever increasing workload of the Administrative Tribunal and the resulting backlog of cases before it, the Secretariat of the Administrative Tribunal should be strengthened by the addition of a post of Deputy Secretary with a view to carrying out efficiently and expeditiously its functions.

Recommendation 4: Joint Appeals Board and Committee for Professional Responsibility

(a) The present Joint Disciplinary Committee should be replaced by a Committee for Professional Responsibility. This Committee's functions will be analogous to those of the Joint Disciplinary Committee, but with greater emphasis on the ethical as compared to the disciplinary aspects of its role.

(b) New members of the Joint Appeals Board and the Committee for Professional Responsibility should be offered basic legal courses with special reference to the terms of appointment of the United Nations staff, the administrative policies and practices of the Organization and the jurisprudence of the Administrative Tribunal.

(c) The practice of accepting the unanimous recommendations of the Joint Appeals Board and the Committee for Professional Responsibility should be

revivified, with a view to emphasising the importance of these advisory bodies established under regulations issued by the General Assembly, without compromising in any way the authority of the Secretary-General as Chief Administrative Officer of the Organization.

(d) The Secretariat of the Joint Appeals Board should publish annual reports containing information on the cases heard as well as general statistics on the disposition of such cases.

(e) The holding of oral hearings before all United Nations appellate bodies should be the subject of further study with a view to ascertaining whether this modality could contribute to the settlement of disputes and speed up the disposition of cases.

(f) Information technology, including *video-conferencing*, should be increasingly used with the aim of facilitating the access of field-based staff to dispute-settlement instances and appellate bodies.

Recommendation 5: Options for a higher appeal instance

The Inspectors believe that further consideration should be given to reviving the advisory function of the International Court of Justice in the internal recourse procedure. In the meantime, closer working relationships should be encouraged between the UNAT and the other major Tribunal in the United Nations System, the International Labour Organization Administrative Tribunal (ILOAT) with a view to rationalizing their competence and jurisdiction and harmonizing their jurisprudence.

Recommendation 6: Proper Legal Advice and Representation for Staff Members

As a first step to enhance the availability of legal advice and representation for the staff, the Inspectors recommend that the Office of the Coordinator of the Panel of Counsel should be strengthened. The post of Coordinator should be classified at the senior Professional level and filled by a staff member with strong legal qualifications. In addition, the option should exist for staff members, who at present may be represented only by current and retired staff members, to be represented by staff members who have separated from the Organization through resignation or in other ways.

I. INTRODUCTION

1. The Joint Inspection Unit has decided to include in its work programme for 1999 the administration of justice at the United Nations. This is a much vexed and vexing question, which has been the subject of numerous attempts at reform which have, up to now, failed to bring about the desired results. The Unit welcomes the preparation of this report as an opportunity to study an area which offers wide range for reform. It is apparent that not all the cogs and wheels in the system of administration of justice are working well together. Disagreements seem to exist not only between administration and staff representatives, but also between different areas of the administration. If the machinery is going to function smoothly, both in the short and the long term, it is in dire need of some judiciously administered oil.

2. For many years, attempts have been made to improve the current system of administration of justice at the United Nations and the various organizations in the United Nations common system. As far back as 1976, following a symposium held in Geneva from 26 to 28 January, the Federation of International Civil Servants' Associations (FICSA) formulated several proposals concerning the functioning of an administrative tribunal.[2] The proposals were examined by the Consultative Committee on Administrative Questions (CCAQ) and, in 1979, by a Joint FICSA/CCAQ working group, but were not entertained.

3. In resolution 33/119 (Part I, para.2), of 19 December 1978, the General Assembly asked the Secretary-General to explore, together with his colleagues in the Administrative Committee on Coordination (ACC), the feasibility of setting up a single administrative tribunal. An *ad hoc* meeting of the Legal Advisers in the United Nations common system, held on 13 and 14 September 1979 in Geneva, considered a study on the subject prepared by the United Nations Legal Counsel and his counterparts in the other organizations. At the end of their deliberations, the Legal Advisers concluded that "*the establishment of a single tribunal might be achieved more easily by a purposeful harmonization and further development of the statutes, rules and practices of the existing tribunal. Such a course of action would, in addition to achieving other improvements, in the long run also facilitate the establishment of a single tribunal should a real need for such a step be felt in the future*". [3]

4. As the proposal to merge the UNAT and the ILOAT did not succeed, the idea emerged of moving towards progressive harmonization, as suggested by the Legal Advisers in their conclusions. Although the United Nations General Assembly endorsed that idea by decision 34/438, of 17 December 1979, the studies initiated in that sense were not followed by appropriate proposals, in particular, because of "*the large number of entities that need to be consulted....*"[4] In resolution 37/129, of 17 December 1982, the General Assembly requested the Secretary-General to pursue his consultations.

5. In 1984, the Secretary-General formulated concrete proposals to improve and harmonize the statues and rules of UNAT and ILOAT.[5] These proposals addressed questions relating to the composition of the two tribunals, such as the qualifications of members, selection of members and structure of the tribunals, the extension of their jurisdiction, the formal prerequisites for proceedings, the procedures to be followed, the possibilities of requesting a review and the interpretation of judgements and, in particular, the question of the reversal of these judgements on appeal.

6. Even though the 1984 proposals were reiterated and updated in 1985,[6] 1986 and 1987, they did not lead to action by the General Assembly, which none the less

continued to explore ways and means of examining the question, as shown by its decisions 39/450 of 18 December 1984, 40/465 of 18 December 1985 and 41/447 of 5 December 1986, and its resolution 42/217 of 21 December 1987.

7. In 1986, the Joint Inspection Unit prepared a report on the administration of justice at the United Nations.[7] In particular, the report formulated recommendations relating to the creation of an Office for the Administration of Justice within the Executive Office of the Secretary-General, to the establishment of an office of Ombudsman and to the accountability and responsibility of managers and other staff. Many conclusions and recommendations contained in that report are endorsed, *mutatis mutandis*, in the present report.

8. The General Assembly considered the report of the JIU on the administration of justice in the United Nations at its forty-second session, in 1987. In resolution 42/220 C, of 21 December 1987, the Assembly requested the Secretary-General to continue to improve the procedures for resolving disputes and appeals by taking steps which ensure their objective and expeditious resolution. The Assembly also requested the Secretary-General to continue to review the feasibility of the establishment of an independent office of Ombudsman in the Secretariat.

9. One year later, the Secretary-General made more specific proposals with a view to amending the Statute and Rules of UNAT. He also recommended that ILO consider doing the same with regard to ILOAT[8]. By decision 43/452, of 21 December 1988, the General Assembly invited Member States to make known their observations and suggestions. Of the few Member States that responded, some were in favour of the proposals and recommendations put forward; whereas others formulated reservations and put forward further considerations.[9]

10. On 19 December 1989, the Assembly adopted resolution 44/185 B, in which it noted the importance of a just and efficient internal justice system in the Secretariat. The Secretary-General submitted a further report on the subject to the Assembly in 1990.[10] During that session, the Assembly decided to postpone the harmonization process indefinitely.

11. In response to General Assembly resolution 47/226, of 30 April 1993, the Secretary-General formulated in 1994 new proposals for reforming the administration of justice at the United Nations Secretariat. The proposals included setting up a system which encouraged conciliation and arbitration before any application to UNAT, in particular by setting up a body of mediators. In addition, the preliminary procedure was professionalized by transforming the two joint bodies, the Joint Appeals Board and the Joint Disciplinary Committee, into organs composed of full-time administrators and chaired by eminent figures recruited from outside the Organization.[11]

12. By resolution 49/222 A, of 23 December 1994, the Assembly requested a report on the implementation measures required to reform the Organization's internal justice system. In response to this request, the Secretary-General submitted a report on the reform of the internal system of justice in the United Nations Secretariat.[12] Subsequently, he amended his proposals to reflect comments received from the Administrative Tribunal.[13] His proposals, however, failed to win the support of the General Assembly.

13. Although the Inspectors are aware of these many efforts, they have tried not to be bound by precedent in their own attempt at reconciling the diverse interests that find themselves in conflict as regards this issue. There is, admittedly, little room for ground-breaking proposals in this so often explored area. The Inspectors have accordingly concentrated on a few points which, without disturbing to excess the present system, can contribute to develop a more efficient approach to the settlement of staff disputes in a manner consistent with the best interests of the Organization.

14. The present report is divided into two parts. The first part comprises Chapters II, III, IV and V. It describes the present system of administration of justice at the United Nations and its subsidiary organs, including informal, formal and specialized procedures, and gives an overview of the systems at other international organizations.

15. The second part of the report, comprising Chapters VI and VII, formulates and discusses proposals aiming at reforming the system. Included in Annex I of the report is a Chart illustrating the options open to United Nations staff members contesting administrative decisions. Annex II contains statistical tables showing the workload of the appellate bodies at various duty stations. Finally, Annex III contains lists of the organizations recognising the jurisdiction of the Administrative Tribunals.

16. During the preparation of the present report, the Inspectors benefited from the invaluable cooperation and assistance of numerous officials of the United Nations and other international organizations. The Inspectors wish most especially to express their deep appreciation to all of them.

II. INTERNAL RECOURSE PROCEDURES AT THE UNITED NATIONS: INFORMAL PROCEDURES

17. What at the United Nations is described as the system of administration of justice is essentially the internal recourse procedures established by the Organization for staff members who wish to contest administrative decisions affecting their terms of appointment under the Charter and other applicable regulations, rules and administrative issuances. The first stage, which precedes the formal recourse procedure, consists of all exchanges between administration and staff prior to the adoption of a final decision.

A. Role of the Personnel Services

18. Secretary-General's Bulletin ST/SGB/1998, of 1 June 1998, describes the organization and functions of the Office of Human Resources Management. The core functions of the clusters, which correspond to a large extent to those of the personnel services throughout the Organization, include "*administering and monitoring staff entitlements and benefits.*"

19. In the discharge of their duties, the personnel services are often involved either in the adoption of administrative decisions or in their monitoring and may be called upon to pronounce themselves on the appropriateness of a decision in the light of the relevant staff regulations and rules and other administrative issuances. They may, moreover, contribute to settling internal disputes at an early stage.

B. Role of the Staff Counsellor

20. Under ST/SGB/1998, the Staff Counsellor's core functions include "*providing counselling, information and assistance to staff and their families on issues that may impact on their welfare and productivity, such as education, visas, insurance, job transition and retirement, as well as stress management and conflict resolution.*" They also counsel staff members on personal problems, such as indebtedness, family obligations or substance and alcohol abuse. They do not normally participate in the settlement of disputes.

C. Role of the Staff Representatives

21. In theory, the staff representatives do not intervene in individual disputes between the staff and the Organization - or its agents - but only in questions affecting the staff-at-large or specific staff groups. In practice, the staff representatives may intervene informally to resolve misunderstandings and disputes before they reach the appellate bodies.

D. Panel on Discrimination and other Grievances and other informal procedures

22. A Panel to Investigate Allegations of Discriminatory Treatment in the United Nations Secretariat was established in 1977 at Headquarters pursuant to General Assembly resolution 31/26. Panels were subsequently established at major duty stations. In 1983, the Panels were renamed Panels on Discrimination and other Grievances. Information Circulars were issued to announce the appointment of new Panels, the latest of which was Information Circular ST/IC/1997/79.

23. The terms of reference of the Panels are set forth in Administrative Instructions ST/AI/246, of 28 July 1977, and ST/AI/308/Rev. 1, of 25 November 1983. In accordance with ST/AI/308/Rev.1, the Panel submitted annual reports to the Secretary-General every year except for 1996.

24. Some of the Panel reports were distributed as Information Circulars, including ST/IC/86/30, ST/IC/88/64, ST/IC/1990/28, ST/IC/1991/60 and ST/IC/1993/8. Several Information Circulars contained more than one annual report.

25. The reports for the years 1994-1996 were not circulated. The latest report, contained in Information Circular ST/IC/1999/79, of 22 September 1999, covers the activities of the various Panels from 1997 to 1998.

26. An *Ombudsman* exists at the United Nations Office at Nairobi (UNON) whose function is to mediate and attempt reconciliation between the parties before a recourse is submitted to the Joint Appeals Board. Furthermore, the Board's Rules of Procedure and Guidelines have assigned to its Presiding Officer the function to designate conciliating officers chosen from the Board to conduct conciliation proceedings if such proceedings are requested under Staff Rule 111.1 (b).

27. Among subsidiary organs of the United Nations, the United Nations Development Programme (UNDP), the United Nations Children's Fund (UNICEF) and the Office of the United Nations High Commissioner for Refugees (UNHCR) have established their own *ombudsman* systems.

28. The United Nations Development Programme (UNDP) has an *ombudsman* Panel which is also available to staff of the United Nations Population Fund (UNFPA). The Panel members are normally appointed for two years. One of them serves as Coordinator. New members are proposed by the Coordinator to the staff representatives who then recommend them for appointment in consultation with the administration of UNDP and UNFPA.

29. The Panel members deal with many issues, including personnel matters, personality conflicts, general grievances and harassment. They do not intervene in cases handled under other arrangements, such as "collective" cases, which are handled by the staff representatives, performance appraisal report rebuttals or promotion issues.

30. UNDP has its own investigatory body for cases where sexual harassment is alleged: the Grievance Panel on Sexual Harassment. The Panel is composed of ten members jointly recommended by the administration and the Staff Council, from among whom three-member panels are appointed to deal with specific cases. Performance-related issues and, to a certain extent, responsibility issues, are dealt with through the UNDP's Performance Appraisal Review (PAR) system, which may lead to a review by a Management Review Group (MRG).

31. The UNICEF Human Resources Manual, Section 2, describes its informal grievance procedure and ombudsperson system. Under the Manual provisions, "*locally designated staff members (ombudspersons) may investigate any complaint by a staff member alleging mistreatment and/or non-observance of his/her terms of employment.*"
Ombudspersons are selected for a two-year period by either consensus or an election process.

32. The UNICEF Manual further states that the objective of the grievance procedure is one of conciliation between staff members, staff members and supervisors, and staff members and the administration by seeking mutually acceptable solutions through informal means. The purpose of such an informal procedure is to foster a harmonious and productive work environment.

33. Under the Manual, *ombudspersons* are neutral third parties and, therefore, it could be perceived as a conflict of interest for them to get involved in disciplinary matters. Staff charged with misconduct may not be assisted by the *ombudsperson*. Needless to say, they may still benefit from the assistance of counsel, who could be either a serving or a retired staff member.

34. The creation of an office of *Ombudsman* for the United Nations Secretariat was on the General Assembly's Agenda every year from 1985 to 1995. The report on the administration of justice submitted to the Assembly in 1995 included proposals for the establishment of an *Ombudsman* function.[14]

III. INTERNAL RECOURSE PROCEDURES AT THE UNITED NATIONS: FORMAL PROCEDURES

A. Internal Recourse Procedures under the United Nations Staff Regulations and Rules

35. From the legal viewpoint, the system of administration of justice at the United Nations rests on Articles X and XI of the Staff Regulations. Article XI, Regulation 11.1 states that the Secretary-General shall establish administrative machinery with staff participation to advise him in case of any appeal by staff members against an administrative decision alleging the non-observance of their terms of appointment, including all pertinent regulations and rules. Regulation 11.2 states that the United Nations Administrative Tribunal shall, under conditions prescribed in its statute, hear and pass judgement upon applications from staff members alleging non-observance of their terms of appointment, including all pertinent regulations and rules.

36. It is obvious from the foregoing that the bodies concerned with the disposition of appeals - and, as will be seen below, those concerned with disciplinary measures - have been established under the direct authority of the General Assembly. The modalities of their composition and functions are further detailed under Chapter XI of the Staff Rules issued by the Secretary-General pursuant to the above-mentioned staff regulations.

B. Administrative Decision

37. An administrative decision is a prerequisite for the institution of recourse procedures. Staff Regulation 11.1 provides that "*the Secretary-General shall establish administrative machinery with staff participation to advise him in case of any appeal by staff members against an administrative decision alleging the non-observance of their terms of appointment, including all pertinent regulations and rules.*" Rule 111.2 states that " *a staff member wishing to appeal an administrative decision...shall, as a first step, address a letter to the Secretary-General, requesting that the administrative decision be reviewed; such a letter must be sent within two months from the date the staff member received notification of the decision in writing.*"

38. There is no official definition of "administrative decision" at the United Nations. To interpret the meaning of the term, it is necessary to analyse the staff regulations and rules, the statute of the Administrative Tribunal and the Tribunal's jurisprudence.

39. First, an administrative decision must, pursuant to Staff Regulation 11.1, concern the staff member's terms of appointment, including all the pertinent regulations and rules. Furthermore, in accordance with Staff Rule 111.2, the decision must have been communicated to the staff member in writing.

40. The meaning of "terms of appointment" is further developed in the Statute of the Tribunal, which provides, in Article 2.1, that:

"The Tribunal shall be competent to hear and pass judgement upon applications alleging non-observance of contracts of employment of staff members of the Secretariat of the United Nations or the terms of appointment of such staff members. The words 'contracts' and 'terms of appointment' include all pertinent regulations and rules in force at the time of alleged non-observance, including the staff pension regulations."

41. In a number of Judgements, the Tribunal elucidated further the concept of "administrative decision." Thus, the Tribunal has determined that a decision, to be appealable, must be of an individual character, that is to say, that it must be applied personally to the staff member and

have actual effects in his or her terms of employment. The Tribunal has further established that an appealable decision must imply the presence of imminent or actual injury to the staff member. Other findings by the Tribunal help to define more precisely the present interpretation of administrative decision.

42. On the basis of the foregoing, an "administrative decision" within the meaning of Staff Regulation 11.1 is a decision by the Administration concerning a staff member's terms of appointment, including all pertinent regulations and rules, which must be communicated to the staff member in writing and which must apply personally to him or her, thus causing imminent and actual effects on the staff member's terms of appointment.

C. Administrative Review: The Administrative Law Unit

43. Pursuant to Secretary-General's Bulletin ST/SGB/1998/12, the core functions of the Administrative Law Unit are "*handling all aspects of appeals against administrative decisions, as the representative of the Secretary-General, before the Joint Appeals Board and the Joint Disciplinary Committee.*" In the discharge of its functions, the Unit handles the letters addressed by staff members to the Secretary-General alleging violation of their terms of appointment.

44. Furthermore, the Unit provides advisory services in the administration of justice, including legal assistance in the handling of appeals and disciplinary matters; prepares and submits the Secretary-General's response in appeals filed before the Board; reviews disciplinary matters with a view to determining whether disciplinary charges are warranted; prepares recommendations for disciplinary action as appropriate; and prepares and submits written presentations to the Joint Disciplinary Committee.[15]

D. Staff Legal Advice and Representation: The Panel of Counsel in Disciplinary and Appeals Cases

45. Staff rule 110.4 states that *"no disciplinary proceedings may be instituted against a staff member unless he or she has been notified of...the right to seek the assistance in his or her defence of another staff member or retired staff member."* Staff rule 110.7 *(d)* states that *"a Joint Disciplinary Committee shall permit a staff member to arrange to have his or her case presented before it by any other staff member or retired staff member ..."*

46. Panels of counsel in disciplinary and appeals cases are composed of *"current and retired staff members"* from the United Nations Secretariat, UNDP, UNICEF and UNHCR *"who are willing to volunteer some of their time, knowledge and experience to assist colleagues with regard to problems related to their conditions of service under the Staff rules..."* [16] They provide *"information, advice and, where appropriate, representation before the JAB, the JDC, the Administrative Tribunal and elsewhere."* Panels have been established at New York, Geneva and Vienna.

47. The Office of the Coordinator of the Panel of Counsel is a comparatively recent creation. For many years, it was the JAB/JDC Secretariat that maintained the list of members of the Panel of Counsel and advised prospective appellants on their availability. The position of Coordinator was established in 1984 taking advantage of the temporary availability of a senior staff member with legal qualifications. Upon the reassignment of this staff member to other functions; the post was filled by a non-Professional staff member.

E. Appeals: The Joint Appeals Board

48. Chapter XI of the Staff Rules stipulates the composition, mandate and functions of the Joint Appeals Board. Rule 111.1 states that *"Joint appeals boards shall be established in New York, Geneva, Vienna, Nairobi and at such other duty stations as may be designated by the Secretary-General ..."* The Rule further states that the Boards shall be composed of Chairpersons appointed by the Secretary-General in consultation with the staff; members appointed by the Secretary-General; and members elected by the staff.

49. Appeals against administrative decisions by staff of the United Nations Development Programme (UNDP) , the

United Nations Children's Fund (UNICEF) the United Nations Population Fund (UNFPA) and the Office of the United Nations High Commissioner for Refugees (UNHCR) are referred to the United Nations Joint Appeals Board. The Board's recommendations are considered by the United Nations Under-Secretary-General for Administration on behalf of the Secretary-General.

F. Misconduct and other Violations of Professional Responsibility: The Joint Disciplinary Committee

50. Article X of the Staff Regulations is entitled "Disciplinary Measures." Regulation 10.2 states that the Secretary-General may impose disciplinary measures on staff members whose conduct is unsatisfactory and may summarily dismiss a member of the staff for serious misconduct. Rule 110.1 states "*failure by a staff member to comply with his or her obligations under the Charter of the United Nations, the Staff Regulations and Staff Rules or other relevant administrative issuances, or to observe the standards of conduct expected of an international civil servant, may amount to unsatisfactory conduct within the meaning of staff regulation 10.2, leading to the institution of disciplinary proceedings and the imposition of disciplinary measures for misconduct.*"

51. Rule 110.4 states in part that "*no disciplinary proceedings may be instituted against a staff member unless he or she has been notified of the allegations against him or her...and has been given a reasonable opportunity to respond to those allegations.*" In addition, "*no staff member shall be subject to disciplinary measures until the matter has been referred to a Joint Disciplinary Committee for advice...*"

52. Regulation 10.1 states that the Secretary-General may establish administrative machinery with staff participation which will be available to advise him in disciplinary cases. The composition, mandate and functions of the Joint Disciplinary Committee are stipulated under Chapter X of the Staff Rules.

53. Pursuant to Rule 110.5, Joint Disciplinary Committees are established at Headquarters, Geneva, Vienna and other offices designated by the Secretary-General. Rule 110.6 states that the Committees shall be composed of Chairpersons appointed by the Secretary-General in consultation with the staff, members appointed by the Secretary-General and members elected by the staff.

54. Disciplinary cases at UNDP, UNOPS and UNFPA are handled by the UNDP/UNOPS/UNFPA Disciplinary Committee, whose authority and procedures re the same as those of the United Nations Joint Disciplinary Committee, except that its recommendations are submitted to the Administrator of UNDP, who takes the final decision on what disciplinary penalty, if any, should be applied.

55. In 1954, the International Civil Service Advisory Board (ICSAB), which was replaced in 1975 by the International Civil Service Commission (ICSC), issued its Report on Standards of Conduct in the international civil service "*to assist staff members and executive heads of the organizations to understand better the obligations placed on staff conduct by the Charter and the staff regulations and rules.*"[17] The report has not the force of law but consists in a discussion of expected standards rather than in binding rules. It has been, however, repeatedly cited by the Administrative Tribunal when assessing staff conduct. As noted by the General Assembly in paragraph 13 of resolution 52/252, of 8 September 1998, the ICSC has included in its work programme the updating of the 1954 Report in consultation with ACC and CCAQ.[18]

G. The Office of Internal Oversight (OIOS) and its role in disciplinary cases

56. The Office of Internal Oversight (OIOS) was established in accordance with General Assembly resolution 48/218 B, of 29 July 1994. As part of its functions, OIOS "*investigates and reports on possible violations of United Nations regulations, rules and other pertinent administrative*

issuances, on misconduct, mismanagement, waste of resources and abuse of authority."[19]

57. Furthermore, OIOS "*...is not mandated to participate in or to autonomously take administrative action or to initiate disciplinary action...While...OIOS may report the facts it has found and issue recommendations it deems appropriate, its findings will be reviewed, evaluated and utilized independently by other judiciary and administrative bodies of the Organization vested with the authority and responsibility to initiate and to take disciplinary measures or administrative action.*" [20] Representatives of OIOS usually appear before the Joint Disciplinary Committee to present evidence and other testimony as to the cases they have investigated.

H. Higher Instance: The United Nations Administrative Tribunal

58. Staff members whose appeals are rejected, whether in full or in part, by the Joint Appeals Board, may apply to the United Nations Administrative Tribunal (UNAT). The Tribunal was created by the General Assembly in 1949 by resolution 351 (IV).

59. The functioning of the Tribunal is regulated by its Statute (AT/11/Rev. 5). Under Article 2 of its Statute, "*The Tribunal shall be competent to hear and pass judgement upon applications alleging non-observance of contracts of employment of staff members of the Secretariat of the United Nations or of the terms of appointment of such staff members.*" The Tribunal shall also be open to former staff members and other persons who are entitled to rights under any contract or terms of appointment upon which staff members could have relied.

60. Seven members nominated by their countries and appointed by the General Assembly make up the Tribunal. Its Secretariat is part of the Office of Legal Affairs (OLA).

61. The Secretary-General is represented before the Tribunal by the General Legal Division, OLA. Under Article 13 of the Tribunal rules, applicants may designate to represent them staff members of the United Nations or one of the specialized agencies or counsel authorized to practice in any country a member of the Organization concerned. The judgements of the Tribunal - which is currently the highest instance of appeal in the Organization - are final and binding.

I. The International Court of Justice: its historical role in the internal recourse procedure

62. The International Court of Justice was established under the Charter of the United Nations as the principal judicial organ of the United Nations to resolve disputes between States. Chapter II of the Statute of the Court describes its competence. Article 34, (1) states that "*Only states may be parties in cases before the Court.*" This Article would appear to bar any possible referral to the Court of internal disputes involving staff and management.

63. Even so, the Court played an important role for a number of years in matters concerning international organizations and their staff. Indeed, the Court served, in some respects, as a higher instance in regard of the two main international administrative jurisdictions, namely, the UNAT and the Administrative Tribunal of the International Labour Organization (ILOAT).

64. Applications for review of UNAT judgements by the Court were submitted to a special body known as the Committee to review the judgements of the Administrative Tribunal. This body was "*composed of the Member States the representatives of which have served on the General Committee of the most recent regular session of the General Assembly.*"

65. The Court could review a UNAT judgement only in respect of the particular questions presented by the Committee on

the ground of four criteria specified in the UNAT Statute. These criteria were: that the Tribunal has exceeded its jurisdiction or competence; that the Tribunal has failed to exercise jurisdiction vested in it; that the Tribunal has erred on a question of law relating to the provisions of the United Nations Charter; or that the Tribunal has committed a fundamental error in procedure which occasioned a failure of justice. The Court's advisory opinion was binding on the Secretary-General and the UNAT, which might be required to confirm its original judgement or to issue a revised one.[21]

66. The Court's role was in fact closer to a "*recours de cassation*," in the French judicial system, than to an appeals instance. The Court did not reopen the procedure but only reviewed, as appropriate, a judgement, so that the tribunal which had issued it would have to confirm the said judgement or revise it in the light of the Court's advisory opinion.

67. ILOAT judgements could be challenged by the ILO Governing Body - which could ask the Court for advisory opinions - but not by the appellants. This could be done when the decision confirmed the Tribunal's jurisdiction or when it was considered that such decision was vitiated by a fundamental fault in the procedure followed. [22]

68. As for UNAT, it was only in 1955 that staff members were allowed to contest UNAT judgements. Yet this recourse could not be made directly, as noted above, but rather through a special body.

69. Besides, the Court was seldom called upon to intervene. It reviewed an ILOAT decision only once, in 1956, and UNAT judgements three times, in 1973, 1982 and 1987. In every case it issued an advisory opinion without reopening the contested procedures. In 1956, having intervened at UNESCO's request, the Court estimated that the ILOAT had not exceeded its competence in deciding on an appeal by UNESCO staff against the Director-General's decision not to extend their fixed-term contracts.

70. In 1973, the Court intervened at the request of a staff member contesting UNAT judgement 158 (*Fasla*). In this judgement, the Tribunal had rejected the staff member's appeal against the non-renewal of his contract. The Court confirmed the judgement, since the Tribunal had not committed a fundamental error in procedure which occasioned a failure of justice.

71. In 1982, having intervened this time at the request of a Member State, the Court confirmed UNAT judgement 273 (*Mortished*). It considered that the Tribunal had not exceeded its competence or erred on a question of law relating to the provisions of the United Nations Charter. In 1987, having intervened at the request of the staff member concerned, the Court confirmed UNAT judgement 333 (*Yakimetz*).

72. The 1986 JIU Report on the administration of justice at the United Nations pointed out that the recourse to the Court had been criticized because it did not fully safeguard the principles of equality of the parties and separation of powers. This observation resulted from the fact that, as noted above, the Statute of the ILO Tribunal allowed only ILO - and not the appellants - to submit a recourse to the Court.[23]

73. Furthermore, under the Statute of the UNAT, recourse to the Court was contingent upon the authorization of a political, not a judicial body: the Committee to review the judgements of the Administrative Tribunal. Finally, it was open to question whether the Court, whose normal duty was to adjudicate disputes between States, was a proper body to review administrative decisions involving individual staff members.

74. On 11 January 1995, the General Assembly adopted resolution 50/54. By this resolution, the Assembly, noting that the procedure provided for under Article 11 of the UNAT's Statute had not proved to be a constructive or useful element in the adjudication of staff disputes within the Organization, decided to amend the Statute of UNAT by deleting Article 11 and renumbering all other paragraphs in

consequence. The Assembly also stressed the importance for the staff and the Organization alike of ensuring a fair, efficient and expeditious internal system of justice within the United Nations, including effective mechanisms for the resolution of disputes.

IV. SPECIALIZED PROCEDURES AT THE UNITED NATIONS

75. There are a number of issues affecting United Nations staff which are excluded from the competence of the appellate bodies. Specialised procedures available in respect of these issues include the following:

(a) Appeals against decisions of the United Nations Joint Staff Pension Fund (UNJSPF), for which the Standing Committee of the United Nations Joint Staff Pension Board (UNJSPB) is, on behalf of the Board, to review decisions by the Standing Committee itself, as well as to hear appeals from decisions of local Staff Pension Committees;

(b) Claims for compensation in the event of death, injury or illness attributable to the performance of official duties, in respect of which the Advisory Board on Compensation Claims (ABCC) makes recommendations;

(c) Claims concerning loss of or damage to personal effects attributable to the performance of official duties, which are examined by a Claims Board;

(d) Disputes concerning eligibility for sick leave, which are referred to an independent medical practitioner or a medical board acceptable to both the Secretary-General and the staff members;

(e) Appeals in respect of classification of posts, which involve recourse to a Secretariat-wide Classification Appeals and Review Committee for Professional staff and Classification Appeals Committees at all major duty stations for General Service Posts;

(f) Appeals in respect of competitive examinations for promotion to the professional category, which are reviewed by the Central Examination Board; and

(g) Rebuttal by staff members of their Performance Appraisal System (PAS) reports.

76. Some organizations, such as ILO and UNESCO, have established permanent Reports Committees composed of senior staff members to consider rebuttals of performance evaluation and performance appraisal reports.

V. RECOURSE PROCEDURES AT OTHER INTERNATIONAL ORGANIZATIONS

A. Internal Recourse Procedures

i. International Labour Organization (ILO)

77. Internal recourse procedures at the International Labour Organization (ILO) are governed by Chapter 13 of the ILO Staff Regulations: Review, Complaints and Appeals. The review procedure under Article 13.1 allows an official who considers that he has been treated inconsistently with the provisions of these Regulations or with the terms of his contract of employment, or that he has been subject to unjustifiable or unfair treatment by a superior official, to request that the issue in question be reviewed with a view to its settlement.

78. This review, which, the Inspectors were told, works very well, has little resemblance to formal legal procedures and is never carried out in consultation with the legal services. Mediation, conciliation and negotiation are used to resolve conflict. Although the review is neither contentional nor formal, it must take place within time-limits; i.e. it cannot be used to bypass deadlines. The results of the review are not hostile to any of the parties.

79. Under Article 13.2, any complaints by an official that he has been treated inconsistently with the provisions of these Regulations or with the terms of his contract of employment, or that he has been subjected to unjustifiable or unfair treatment by a superior official shall, except as may be otherwise provided in these regulations, be addressed to the Director-General through the official's responsible chief and through the Personnel Department within six months of the treatment complained of. The Director-General may refer any such complaint to the Joint Committee for observations and report.

80. Finally, an official shall be entitled to appeal to the ILO Tribunal as provided by the Statute of the Tribunal. Further information on the Tribunal is contained in paras. 93 to 99 below.

ii. United Nations Educational, Scientific and Cultural Organization (UNESCO)

81. The appeals procedure at the United Nations Educational, Scientific and Cultural Organization (UNESCO) involves two stages: the complaint and the submission of the case to the Appeals Board, a joint body chaired by an independent person which advises the Director-General before a final decision is taken. For the staff member, the complaint consists, in the first instance, in submitting an application for the review of an administrative decision by the Director-General. The time-limit for doing so is one month for staff stationed at Headquarters and two for staff away from Headquarters.

82. As a first step, the staff member must address a notice of appeal to the Secretary of the Appeals Board. Within a month of this notice, he or she must file a detailed appeal to that body. The administration is then allowed the same period of one month to submit a detailed reply. In practice, the appellant frequently submits a rejoinder and in consequence the administration submits a surrejoinder.

83. If the staff member is not satisfied with the ruling made by the Director-General after taking cognizance of the recommendation or the Appeals Board, he or she may refer it to the ILO Administrative Tribunal (ILOAT) within a 90-day period.

84. UNESCO has recognised ILOAT's jurisdiction since 1953. The UNESCO General Conference renewed regularly this

recognition, on each occasion for a six-year period, until the end of 1995. Since then, it has recognised the ILOAT's jurisdiction for two-year periods only as it now advocates the creation of another appeals instance at a higher level. (See paras. 161 to 174 below). UNESCO's current recognition of ILOAT's jurisdiction expires on 31 December 2001.

iii. International Bank for Reconstruction and Development (IBRD)

85. The grievance process system of the International Bank for Reconstruction and Development (IBRD) consists of four distinct stages: informal dispute resolution; administrative review; quasi-judicial internal procedure; and final disposition by an Administrative Tribunal. On the whole, it accords roughly with the United Nations system.

86. The Inspectors feel, however, that the Bank's system appears to benefit from more emphasis on informal mediation prior to the formalisation of disputes and greater conceptual and practical flexibility. For instance, at the Bank an Office of Professional Ethics deals with issues which, at the United Nations, are tackled by a Joint Disciplinary Committee, whose name itself begs the question.

87. Furthermore, the appellate bodies at the Washington-based institutions are more independent than their United Nations counterparts, in as much as their Secretariats enjoy more independence. Besides, their decisions are more wide-ranging: for instance, a number of Bank's staff members have been reinstated in response to its Appeals Committee's recommendations, something that does not normally happen at the United Nations. It is also worth noting that internal bodies at these institutions, in contrast with similar bodies at the United Nations, publish regular reports on their activities, thus ensuring a high degree of transparency.

88. In 1998, the Bank appointed an internal Grievance Process Review Committee. This Committee was charged with examining the Bank's grievance system and recommending changes to make the system more fair and credible. The Committee undertook a broad examination of the Bank's existing system and possible alternatives.

39. As stated before, the Inspectors were favourably impressed by the Bank's system as compared with the United Nations system. The Bank's Grievance Process Review Committee, however, found that the Bank's grievance system over-emphasised formal, adversarial approaches to dispute resolution; lacked sufficient independence from management influence; did not adequately protect grievants' rights or hold managers accountable for complying with Bank rules or regarding appropriate treatment of subordinates; and was not readily accessible to employees located away from the Bank's Washington DC headquarters.

90. In addition, the Review Committee recommended a series of steps designed to strengthen the Bank's system's provision for informal dispute resolution; hire additional staff with skills in areas such as discrimination and employment law; increase the system's independence; strengthen procedural safeguards for grievants; hold managers responsible for complying with the Organization's rules regarding appropriate treatment for subordinates; and expand access for field-based employees.

91. The Inspectors note that the Bank's system, which impressed them so positively, appeared, to a Committee appointed to review it, to be susceptible of further improvement. In the Inspectors' view, this fact merely underlines that the United Nations has a long way to go towards changing and improving its overall approach to dispute settlement.

iv. International Monetary Fund (IMF)

92. The International Monetary Fund (IMF) counts with an *Ombudsperson*; a joint staff-management Grievance Committee;

and an Administrative Tribunal. Under the *Ombudsperson*'s terms of reference, the position has been established "*to make available the services of an impartial and independent person to address the employment-related problems of individuals.*"

93. To resolve employment-related problems, the *Ombudsperson* will exercise judgement in seeking to facilitate the resolution of conflicts, using mediation or conciliation or other appropriate means. The *Ombudsperson* is independent of any official, department, office, bureau or any other organizational entity of the Fund.

94. As a rule, the *Ombudsperson* does not investigate any allegations of misconduct. If a person who has contacted the *Ombudsperson* decides to file a formal grievance or to apply to the Administrative Tribunal, the *Ombudsperson* will refrain from assisting the grievant once the grievance is filed or the application is made.

B. Higher appeal instances: the administrative tribunals

1. Organizations in The United Nations System

i. International Labour Organization (ILO)

95. Together with the United Nations Administrative Tribunal (UNAT), the ILO Administrative Tribunal (ILOAT) is, at present, the highest judicial organ in the United Nations System with jurisdiction over staff-administration disputes. Thirty-seven organizations, many of them from outside the United Nations system, have recognised the competence of the ILOAT.[24]

96. Seven judges of different nationalities and from different legal systems sit in the Tribunal. More judges tend to be from Europe than from other regions, partly for historical reasons, partly because numerous regional organizations which have recognised the Tribunal's jurisdiction are located in Europe.

97. Following contacts with international legal authorities, high national courts of justice, bar associations and similar entities, the ILO Director-General draws up a list of candidates for positions as judges in the Tribunal which he submits to the Governing Body. The Governing Body in turn places this list before the ILO Conference, which appoints the judges.

98. The Tribunal holds sessions twice a year, in May and November. At each session, it examines 50 to 60 cases. This high number of cases constitutes a heavy burden for the judges to absorb.

99. Under the ILO Administrative Tribunal rules, appellants may be advised or represented in appeal cases by any serving or former staff member of a participating organization or of the United Nations, or a member of a bar association in member State of one of those organizations or, with the President's approval, by a person qualified to deal with international civil service matters. This is a wider concept than at the United Nations Administrative Tribunal, which excludes staff from another organization or separated other than by retirement.

100. As mentioned before, there is at the United Nations a maximum compensation equivalent to two years' salary. By contrast, the statute of the ILO Tribunal imposes no limit on the compensation that can be paid to appellants. The ILO Tribunal decides what is proper compensation and the participating organizations cannot - as the United Nations can - substitute compensation for the rescinding of the decision contested or the specific performance of the obligation invoked by appellants if the Tribunal has ordered the latter without option.

101. The Registry of the Tribunal is independent from any other office at ILO and is not part of any administrative hierarchy. The Registry comprises the Registrar, the Assistant Registrar, support and secretarial staff and temporary staff. The Registrar is appointed by the Director-General and is answerable to him, but, in

practice, the Registrar's immediate supervisor is the President of the Tribunal.

2. Other International Organizations

i. Organization of American States (OAS)

102. The Organization of American States (OAS) has an Administrative Tribunal. Like all other organs of the OAS, the Tribunal is subordinated to the OAS General Assembly. The Tribunal's competence may be extended to any other inter-American specialised organization of the OAS.

103. The composition of the OAS Administrative Tribunal must reflect the two major legal traditions of the American continent: the common-law tradition and the civil-law tradition. The Tribunal is composed of six members. All members shall be experienced lawyers, law professors or judges by profession and serve strictly in their personal capacity.

104. Tribunal Members are elected by the OAS General Assembly to serve for a six-year term. These terms are staggered in such a way that a new member is chosen every year. No member shall serve more than two consecutive terms.

105. The filing of a complaint before the Tribunal shall not have for effect the suspension of the implementation of the contested decision and the judgements shall be final and without appeal. More important, the Tribunal recognises the finality of all settlement agreements, releases, arbitration agreements and agreements to seek conciliation or mediation, and may not reopen, review or adjudicate the issues resolved through those agreements or procedures.

106. In addition, an appellate panel exists at Washington DC which is composed of members of the Tribunals of the IBRD, the IMF and the OAS.

ii. Organization for Economic Cooperation and Development (OECD)

107. The Organization for Economic Cooperation and Development (OECD) established an Administrative Tribunal in December 1991. The Tribunal handed down 30 judgements between July 1992 and March 1998. The judgements are not subject to appeal except for purposes of rectification of error (*erreur matérielle*), revision or interpretation. The Organization has also established an Advisory Board for all disputes and a Classification Panel.

VI. REFORM OF THE ADMINISTRATION OF JUSTICE AT THE UNITED NATIONS: TOWARDS A STREAMLINED, MORE EQUITABLE AND MORE EFFICIENT SYSTEM

A. Administrative and Structural Reform: Creation of an Office for the Settlement of Disputes and the Administration of Justice

108. The Inspectors have found no reason to believe that the units dealing with the internal administration of justice at the United Nations are in any way subject to undue pressure by management. Yet the image and credibility of these units, which at present are firmly ensconced within the hierarchical structures of the Organization's administration, would be greatly enhanced by their removal from those structures and their enjoyment of visible independence from them.

109. It is worth noting, in this respect, that the Registry of the ILO Administrative Tribunal is not part of any hierarchical structure but remains independent from any other administrative area of the ILO Secretariat.

110. The Inspectors therefore propose that an office should be created at the United Nations encompassing all units at present concerned with the administration of justice and the settlement of disputes in the Organization. This office, to be known as the "Office for the Settlement of Disputes and the Administration of Justice," should report directly to the Executive Office of the Secretary-General.

111. In the Inspectors' view, the title proposed for the new Office puts the emphasis back where it belongs: the establishment and functioning of a machinery to settle disputes between the Organization and the members of the staff before entering into formal litigation. This is an aspect that has been somewhat neglected in the Organization until now.

112. At the same time, it is important to maintain the expression "administration of justice". Since international civil servants have no access to national courts, the organizations must offer them an internal system of administration of justice comparable to the domestic systems obtaining throughout the world.

113. The Office should include, first, the *Ombudsman* function, which would be responsible for the settlement of disputes between the organization and its staff; and, secondly, all units dealing with the litigation aspects of the administration of justice, namely, the Secretariat of the Administrative Tribunal, the Secretariat of the Joint Appeals Board and the Committee for Professional Responsibility, and the Office of the Coordinator of the Panel of Counsel.

B. United Nations Administrative Tribunal

114. The Inspectors note that a limitation has been imposed in practice on the powers of the Tribunal. In effect, under Article 9, (1) of the Tribunal's Statute, the Tribunal may order the rescinding of the decision contested or the specific performance of the obligation invoked by an appellant whose application has been found well founded. Yet the Secretary-General may decide, in the interest of the United Nations, that the applicant shall be compensated instead up to a maximum of two years' net base salary.

115. As far back as 1976, the FICSA Symposium on Recourse Procedures in the Organizations of the United Nations [25] stated that the limitation in the powers of the UNAT, as described above, led to a very unsatisfactory situation. Recommendation III of the Symposium, which was endorsed by FICSA, partly read as follows:

"(b) when the tribunal recognizes that an application is fully justified, it should be for the tribunal, and not for the head of the

secretariat, to decide whether the annulment of the decision appealed against or the carrying out of the obligation established is possible and advisable, or whether there is reason to award to the interested party an indemnity as compensation for the prejudice suffered;

(c) if the tribunal decides to make an award, it should be free to fix the amount without any predetermined limit being applied so that full compensation for the prejudice suffered may be made."

116. The Inspectors are of the opinion that, to establish a genuine system of administration of justice and enhance the credibility of the Tribunal and other appellate bodies, restrictions on the authority of the Tribunal must be removed. The Tribunal should have full powers to order the rescinding of a decision contested or the specific performance of the obligation invoked.

117. Furthermore, the Tribunal alone should decide on the amount of compensation to be paid to the appellant. In so doing, the UNAT would be aligned with the ILO Tribunal. At the ILO, there is no limit on the compensation that can be paid to the staff. Besides, the ILO Tribunal decides what is proper compensation and the participating organizations cannot substitute compensation for specific performance of the obligation invoked by the appellants if the Tribunal has ordered the latter without option.

118. The Inspectors have also examined the question of the qualifications that UNAT members should possess. The Tribunal's Statute does not establish any specific qualifications for its members. Most of them, however, have previously served as judges in their own countries and have sound legal qualifications. Yet there have been a few cases when members have lacked a legal background or relevant experience. This fact has attracted a certain measure of criticism, particularly by contrast with the ILOAT, whose members are all professional judges from the highest levels of national courts.

119. It is true that, in many instances, the broad knowledge of administrative procedure acquired during a lifetime in the national civil service might be as serviceable, when attempting to settle internal disputes between the management of an Organization and its employees, as the legal experience of members of the judiciary who deal mostly with civil law matters. Yet it seems to the Inspectors that the image of the Tribunal could only be enhanced if all members of the Tribunal possessed high professional qualifications and experience in the judiciary. The Inspectors therefore call upon Member States to spare no effort to ensure that the individuals nominated for membership in the Tribunal meet these requirements.

120. In this connexion, the Inspectors are aware that at its Second Regular Session in October 1999, the Administrative Committee on Coordination (ACC) took note of the report and recommendations of the Legal Advisers of the United Nations System. The ACC subsequently requested the Legal Advisers to provide information on the process of selecting judges for the Administrative Tribunals.[26]

121. Bearing in mind the ever increasing workload of the Administrative Tribunal and the resulting backlog of cases, the Inspectors are of the view that, in order to carry out efficiently and expeditiously its functions, the Secretariat of the Administrative Tribunal should be strengthened by the addition of a post of Deputy Secretary. Once again, they take into account in this respect the leadership of the ILO, where the Registrar of the ILOAT is supported by a Deputy Registrar.

C. Joint Appeals Board and Committee for Professional Responsibility

122. As stated above, the JAB and the present JDC (which the present report recommends should be replaced by a Committee for Professional Responsibility) are advisory bodies established under the authority of the General Assembly. Staff members serving in these bodies, as well as

staff members assisting colleagues as counsel, devote considerable time and energy to this function. In addition, the Organization assigns substantial resources to the Secretariats of these bodies and to the units representing the Administration before them. It accordingly appears to the Inspectors that the outcome of these procedures, which consume such a high level of resources, should receive more recognition than they do at present.

123. The Inspectors refer specifically to the fact that a comparatively high proportion of the recommendations of the JAB and JDC, including unanimous recommendations, are rejected by the administration, often invoking the need to preserve the authority of the Secretary-General as Chief Administrative Officer of the Organization. It would be possible only in a few domestic judicial systems, if any, to reject the verdicts, conclusions or recommendations of juries and other similar judicial or quasi-judicial bodies.

124. The Inspectors also fail to see how the authority of the Secretary-General as Chief Administrative Officer of the Organization could be compromised by the acceptance of recommendations formulated unanimously by advisory bodies established under regulations issued by the General Assembly. The practice of accepting the unanimous recommendations of these bodies - except in truly exceptional cases - should therefore be revivified.

125. In preliminary comments on a draft of the present report, the Office of Human Resources Management (OHRM) referred to the statements contained in the preceding paragraphs as inaccurate. OHRM added that

> *"Pursuant to the policy announced in 1987 that the Secretary-General accepts unanimous recommendations except when they impinge on major questions of law or principle, 43.2 per cent of such recommendations had to be rejected in full during the last three years (1996 - 1998). This was because the Secretary-General determined that those recommendations were based on a defective application of the law, or disregarded established policies, or were not supported by the evidence. In conclusion, unanimous recommendations are accepted unless there is a compelling reason or law or policy or law not to do so and this should not change."*

126. In the Inspectors' view, OHRM's statement fails to prove its point. In truth, it tends to do precisely the opposite. What is 43.2 per cent of unanimous recommendations if not a comparatively high proportion? The JAB and JDC are joint staff - administration bodies. This means that the administration participates actively in their establishment by designating some of their members independently and their Chairpersons jointly with the representatives of the staff. The only possible conclusion that could be drawn from the fact that so many recommendations of these bodies are rejected for the reasons advanced by OHRM, is that these bodies are not performing properly their functions. If this were indeed the case, it would be imperative to revitalise them so that they could discharge effectively the functions laid down for them by the General Assembly.

127. It is not a proper solution for the administration to establish joint advisory bodies under the legislative authority of the General Assembly only to reject such a high proportion of their recommendations. Obviously, such existance by the administration can only increase the number of applications brought before the Administrative Tribunal, in many instances with the backing of unanimous recommendations formulated at the first recourse stage.

128. The situation becomes even more serious when it is borne in mind that the Legal Advisers of the United Nations system have held that there is no need for a second-tier instance against the decisions of the Administrative Tribunals, since, as the

Joint Appeals Boards in a sense serve as a first instance, it could be argued that the Tribunals are already a second instance (See para. 167 below). Yet in no true first instance could so many recommendations be rejected by what is, in practical terms, one of the parties to a dispute.

129. The Secretariat of the JAB and JDC is composed of staff within the Legal Occupational Group. These staff have the necessary knowledge to advise and guide JAB and JDC members in their deliberations. They should be encouraged to do so if it is believed that JAB and JDC members are less than conversant with the administrative provisions governing the staff's terms of appointment, the JAB and JDC rules of procedure and other matters.

130. Furthermore, the role of JAB and JDC members could be strengthened if they were offered basic training in legal matters, with special emphasis on the provisions governing the terms of appointment of staff members and the operation of the units involved in the United Nations system of administration of justice.

131. The Inspectors are aware that the reports of JAB and JDC are not binding and contain only recommendations addressed to the Secretary-General. For that reason, these reports do not establish precedents and cannot form the basis of a body of jurisprudence.

132. Notwithstanding this, the Inspectors would like to see a greater transparency in the operation of these bodies. A first step in this direction could be the publication of an extract of the recommendations of the Board and the disposition of the cases before it, including the acceptance or rejection of the Board's recommendations by the administration. The reports need not include the names of the staff members concerned and would be only informative in nature.

133. These reports should be complemented by the publication of related statistics on such questions as cases heard by the Board and the Committee, recommendations favourable, respectively, to the staff and to the administration, number of unanimous recommendations, number of recommendations accepted or rejected by the administration, in full or in part, and others. An idea of the type of statistical information to be included in such reports can be derived from the tables in Annex II of the present report.

134. It is worth noting, however, that the statistical data received by the Inspectors from the various duty stations appear not to have been compiled on a standard basis. The Inspectors hope that efforts will be made in the future to reconcile such data so as to ensure uniformity and comparability throughout the Organizations.

135. Oral hearings before JAB and JDC, which were virtually the rule some years ago, appear to have been discontinued except for the JDC. The matter should be the subject of further study to ascertain whether oral hearings could expedite the disposition of cases before JAB and, furthermore, contribute to the settlement of disputes.

D. Panel of Counsel in Disciplinary and Appeals Cases

136. It should be pointed out once more that the administration has at its disposal a phalanx of lawyers to advise and represent it at every step of the recourse procedure. First, there is the Regulations and Rules Section, OHRM, staffed by three legal officers whose functions include providing advice on the interpretation and application of the rules to administrators throughout the Organization; secondly, the Administrative Law Unit, OHRM, staffed by three legal officers who represent the administration at proceedings before the JAB and JDC; thirdly, there is one senior legal officer in the Office of the Under-Secretary-General for Management who advises the Under-Secretary-General on the disposition of appeal cases. Before the Administrative Tribunal, the administration is advised and represented by the General Legal Division of the Office for Legal Affairs.

137. By contrast, staff members who require advice on administrative decisions which, in their view, affect their terms of appointment, can address themselves at a first stage only to the Office of the Coordinator of the Panel of Counsel, which lacks staff with sound legal qualifications. From their interviews with the present Coordinator and numerous United Nations officials, the Inspectors have drawn the impression that the present Coordinator is a very dedicated and hard-working staff member whose efforts are highly deserving of praise. It is therefore delicate but pertinent, given this staff member's lack of legal training, to ask whether such efforts are sufficient to provide staff members with proper legal advice and representation.

138. Besides, Panel members, who provide staff with the bulk of advice and representation, act on a voluntary basis and, if they are current staff, on their own time. It is true that, in accordance with Administrative Instruction ST/AI/351, of 25 May 1988, "*a serving staff member who agrees to act as counsel in a case will assist in the preparation and presentation of the case as part of his or her official duties...*" The operation of this provision is, however, "*subject to the exigencies of the service and the constraints of the office.*"

139. In practice, staff members must carry out their duties as counsel against a backdrop of almost continuous and ever deeper budgetary and staff cuts and consequently increased responsibility and workload. Counsel who are actually available to advise and represent staff in appeal and disciplinary cases are apparently far fewer than those formally listed as members of the Panel of Counsel.

140. The situation seems to be even worse at duty stations away from Headquarters, where serious difficulties exist in finding staff members who are able and willing to participate effectively en the internal system of justice. In his comments on a draft of this report, an administrator has observed that the willingness of staff members to serve is:

"affected adversely by the complete lack of incentive or reward system acknowledging the often extremely time-consuming efforts that these staff members invest into their duties as participants of the internal legal system. With the continued reduction in staffing throughout the United Nations system and the corresponding increase in work-load in the course of the day-to-day assignments, the reluctance of staff members to be involved in the administration of justice is, understandably, strong."

141. In the staff representatives' view, the disparity between the legal resources available to management and to staff is compounded by the ban on representation by outside lawyers. The Inspectors have given careful consideration to the question of whether staff members should be allowed to resort to outside lawyers to advise and, more important, to represent them before the Organization's appellate bodies.

142. The Inspectors have concluded that it would not be in the best interests of the Organization or even of the staff themselves to allow outside lawyers to represent staff members before the JAB. The special characteristics of the United Nations internal administrative system are difficult to reconcile with any given domestic law system. The Organization has the right and the duty to resolve its own disputes without outside intervention.

143. Yet the Inspectors recognise that the present system fails to provide staff with proper legal advice and representation. The situation must be remedied as soon as possible. At least a measure of parity should be brought about in the situation of staff and administration as regards to the proper legal advice and representation available to the former.

144. For a start, the Office of the Coordinator of the Panel of Counsel must be strengthened through the appointment of a Coordinator with a sound legal background. Subsequent action should be envisaged to meet the need for legal support at other duty stations.

145. As noted above, staff members may be advised and represented by current or retired staff members, but not by staff who have resigned or separated from the Organization in other ways. The Inspectors feel that all former staff members should be able to represent other staff before the Organization's appellate bodies, except naturally those who have been summarily dismissed or terminated for unsatisfactory services or disciplinary reasons. This step would increase the pool of potential counsel, notably by the addition of former staff members who may have established a legal or equivalent practice at the duty station.

146. In the spirit of this proposal, consideration should also be given to the possibility of allowing staff members to be represented by current and former staff members of other Organizations in the United Nations Common System. This question, however, may be fully reviewed only from a global, system-wide perspective, in close consultation and collaboration with all the participating organizations.

147. Finally, the Inspectors take note of the legal assistance schemes promoted by a number of staff associations of the Organizations in the United Nations Common System.

E. *Ombudsman* function

148. During their meetings with the members of the Panel on Discrimination and other Grievances, the Inspectors found that they were highly motivated but appeared somewhat discouraged at the limited support for their role on the part of the administration. The experience of UNDP, UNHCR and UNICEF, among others, seems to have been much more successful.

149. In view of the above, the time may be appropriate to move, once and for all, towards the establishment of a full-time *Ombudsman* function responsible for settling all types of staff-management disputes through informal conciliation, mediation or negotiation procedures designed to eschew the institution of adversary procedures. In the Inspectors' view, the advantages, including the financial advantages, to be gained from these informal procedures for the settlement of disputes would far outstrip the cost of the function.

150. The function of *Ombudsman* should be entrusted to an independent official at the senior level appointed by the Secretary-General, in consultation with the staff representatives, for a single, non-renewable five-year term. The access of staff members at all duty stations to the *Ombudsman* should be ensured at all times. The *Ombudsman* may be assisted at each duty station by a person or a panel, appointed on a part-time basis, whose work the *Ombudsman* will coordinate.

F. Options for a higher appeal instance

(a) Defining the role of the International Court of Justice

151. Since the role of the International Court of Justice in the internal recourse procedure was discontinued, a *lacuna* exists in respect of such questions as the interpretation of Articles of the Charter of the United Nations in relationship with specific policies and practices of the Organization. It seems, furthermore, that numerous staff and administrators throughout the system feel that an instance should be established with authority to review the decisions of the ILO and United Nations Administrative Tribunals. UNESCO officials, in particular, have formulated concrete proposals regarding the creation of a Superior Court of Appeal for the United Nations System.

152. For their part, the Inspectors believe that further consideration should first be given to the revival of the role of the International Court of Justice in the internal recourse procedure. In its capacity as the principal judicial organ of the United Nations, the Court is in an advantageous position to make a judicial contribution to the mission of the Organization. In the same way as its *judiciary* function allows the Court to contribute to maintaining peace through the resolution of legal disputes between

States, its *advisory* function would allow the Court to contribute to the better functioning of the Organization through the review of judgements of the Administrative Tribunal.

153. The more the Organization follows the course of true integration, the more the Court should, in its capacity as its principal judicial organ, participate in such integration through its role as the United Nations Supreme Court, as it were, responsible for the coherent application of the law, whether international, constitutional or administrative, at the highest level. Essentially, the review of the judgements of the Tribunal should be aimed at ensuring full respect for the Charter in the application of administrative justice. Such a function must naturally be the responsibility of the principal judicial organ of the United Nations: the International Court of Justice.

154. Of course, the Inspectors do not imply that the procedures that have governed the recourse before the Court could not be improved. Such measures as the elimination of political elements from the seizure of the Court and the establishment of equality between the parties come to mind. Besides, the creation of an intermediate appeal function could also be envisaged.

155. At its Second Regular Session in October 1999, the Administrative Committee on Coordination (ACC) considered the report and recommendations of the Legal Advisers of the United Nations System. The Inspectors take note of the ACC's request to the Legal Advisers to explore the possibility of seeking, through the relevant intergovernmental organs, an advisory opinion of the International Court of Justice on the judgements of the Tribunals.[27]

(b) Establishing closer working relationships between the ILO and UN Administrative Tribunals

156. The Inspectors are aware of the reluctance of the ILO and the ILO Administrative Tribunal to consider a movement towards the merger of the Tribunal with the United Nations Administrative Tribunal. Such merger would nevertheless be, in the Inspectors' view, a beneficial development, as shown by the resolutions of the legislative bodies of both organizations in that sense.

157. Furthermore, the obstacles in the way of this development are by no means unsurmountable. While the jurisprudence and doctrines of the two Tribunals are, admittedly, not identical, they are close enough to allow for unification after a period of harmonization. On the positive side, the merged Tribunal, comprising all the organizations which at present recognise the competence of the ILO and United Nations Tribunals, would provide a unified appeal instance for the whole United Nations system.

158. Although the Inspectors make no formal recommendation to that effect in the present report, they wish to set forth their belief that efforts should be pursued actively at this stage to harmonize the statutes and rules of the ILO and United Nations Administrative Tribunals concerning the composition of the two tribunals, their jurisdiction, formal prerequisites for proceedings, procedures, review options, the interpretation of judgements and higher appeal instances.

159. At the present juncture, the ILO and United Nations Administrative Tribunals should, in the Inspectors' view, establish closer working relationships. The Inspectors note in this respect that there are at present no regular contacts between the Tribunals, among other reasons, because they do not meet at the same time in Geneva, but that their Presidents are in touch informally on important issues.

160. To conclude, the Inspectors take note of a proposal put forth to the General Assembly at its current session by the Secretary-General on behalf of ACC. Under this proposal, the statute of the International Civil Service Commission (ICSC) would be amended to allow it to request advisory, non-binding opinions on ICSC decisions and recommendations from an *ad hoc* Joint ILOAT/ UNAT panel.

(c) Working towards a stronger, unified higher appeal instance for the United Nations system

161. Briefly, the administration of justice in the United Nations system consists of, first, internal recourse procedures designed to advise the Executive Heads of the organizations on the disposition of appeal cases and, secondly, procedures before one of the two main Administrative Tribunals in the System - the ILO Tribunal and the United Nations Tribunal - which issue binding judgements on the appeals submitted to them. There is at present no further recourse against decisions of the Tribunals.

162. The Inspectors are aware of a body of opinion held by staff representatives and administrators alike which is favourable to the creation of a higher appeal instance to review the judgements of the Tribunals. They are also aware that a number of administrators believe such instance to be unnecessary.

163. On the occasion of the 29th session of the General Conference of UNESCO, in 1997, the Director-General of the Organization submitted a number of considerations concerning the disadvantages of the existing system of administration of justice. His proposals were designed to reform the system of administration of justice which would offer staff and administration alike the possibility of appealing against a decision by ILOAT. He cited the 1986 JIU report on the administration of justice, which had underlined that "*the issue is first and foremost one of principle.*"[28]

164. The Director-General of UNESCO further quoted the JIU report as follows: "*A system of two-stage judicial appeals is one of the basic principles of democratic law and is established in most countries. It is therefore natural that 'such a system should be desired by United Nations staff...'* "[29] The proposed system envisaged a Judicial Committee headed by a President which would exercise judicial power within the organization through two tribunals: a first-instance tribunal and an appeals tribunal.

165. Moreover, the Director-General pointed out that he had raised the question of the administration of justice within the framework of ACC with a view to improving the functioning of ILOAT and broadening the possibilities of appeal. By its resolution 29 C/79, the General Conference decided "*to call, as a matter of urgency, upon the International Labour Conference to explore, in consultation with the Organizations of the United Nations common system concerned, the measures to be taken to improve the functioning of the Administrative Tribunal of the International Labour Organization.*"

166. Starting in 1998, the Legal Advisers of the United Nations System discussed at several meetings the advisability of introducing a second-tier appellate mechanism to enhance the administration of justice in the organizations in the System. At the request of the Administrative Committee on Coordination (ACC), the Legal Advisers pursued the matter actively and - with the exception of the UNESCO Legal Adviser - reached consensus on a common position at their meeting held in Rome in March 1999.[30]

167. The Legal Advisers' position is that there is no requirement under international law to afford a right of appeal in the context of legal suits. They further hold that, given that the Joint Appeals Boards in a sense serve as a first instance, it could be argued that the Administrative Tribunals are already a second instance.

168. Moreover, another purpose for establishing a second-tier appellate mechanism is to ensure consistent application of the law among the several courts of lower instances. According to the Legal Advisers, the latter argument loses its strength in the context of the United Nations system as the Administrative Tribunals of the United Nations and the International Labour Organization, becoming the "courts of lower instance," do not apply the same law.

169. That said, the Legal Advisers point out that, should ACC decide to consider further the establishment of a second-tier appellate mechanism, at least three options

for such a mechanism can be identified. These options are: a separate mechanism for each agency or organization; a common second-tier for the United Nations system as a whole; and a second-tier for each of the Administrative Tribunals.

170. In a dissident opinion, the UNESCO Legal Adviser pointed up drawbacks of the present system, mainly, that it excludes nearly all possible remedies against a judgement of a Tribunal whose competence is recognised by the organizations. The Legal Adviser recalled that successive proposals to introduce a genuine appellate tribunal, to merge the United Nations and ILO Administrative Tribunals and to harmonize gradually the statutes, practice and case law of the two tribunals were briefly considered and then abandoned.

171. In the UNESCO Legal Adviser's view, it was difficult to understand why errors and omissions cannot be rectified. Such a situation generated feelings of frustration on the part of both staff members and employer organizations.[31]

172. The UNESCO Legal Adviser concluded that the introduction of a second-tier remedy would undoubtedly have a beneficial effect. The options for such a remedy include an appellate tribunal common to UNAT and ILOAT or a separate appellate tribunal each for UNAT and for ILOAT.

173. The report and recommendations of the Legal Advisers of the United Nations System were considered by the Administrative Committee on Coordination (ACC) at its Second Regular Session in October 1999. Following its Session, the ACC requested the meeting of Legal Advisers to elaborate its views on expanding the existing procedures for review by the Administrative Tribunals themselves through the introduction of an "extraordinary appeal" process and on the manner in which this appeal process could be improved. [32]

174. At its 30th session, held from 26 October to 19 November 1999, the UNESCO General Conference, informed of the progress made at the inter-agency level regarding the implementation of the foregoing resolution, adopted resolution 30C/84 by which it requested *"the Director-General to pursue his efforts to achieve an inter-agency solution for improvement of the administrative tribunal mechanisms within the United Nations common system which takes due account of the decisions adopted by the Administrative Committee on Co-ordination (ACC)."*

175. As noted above, the present report concerns itself only with the administration of justice at the United Nations. The Inspectors reiterate that, in their view, any proposals tending to the establishment of a unified higher appeal instance for the United Nations System could only be formulated in close consultation and collaboration with all the participating organizations.

176. Subjects for further analysis concerning higher appeal instances for the United Nations System include the possible role of the International Court of Justice as the highest judicial instance in the United Nations system, the relationship between the two main Administrative Tribunals in the System - the ILO Tribunal and the United Nations Tribunal - and the establishment of a unified higher appeal instance for the United Nations System as a whole.

VII. GENERAL QUESTIONS

A. Full accountability of Secretariat officials

177. In the Inspectors' view, there cannot be any true delegation of authority without clearly defined accountability and responsibility of the officials to whom authority is delegated. In this context, the Inspectors note that, on numerous occasions, Secretariat officials do not appear to have been held accountable and responsible for the implications, including the financial implications, of their wrongful or grossly negligent actions. The Inspectors therefore underline that, whenever the actions of Secretariat officials are found by the appellate bodies to be wrongful or grossly negligent, these officials should be held accountable as appropriate for any financial loss suffered by the Organization as a direct result of those actions.

B. Use of clear language in regulations, rules and other administrative issuances

178. The Inspectors have remarked that staff rules, Secretary-General Bulletins, Administrative Instructions, Information Circulars and other issuances which bear on the terms of appointment of staff members are on occasion drafted in an unclear and ambiguous language that gives rise to misunderstandings as to the nature and intent of the provisions concerned. In the Inspectors' view, all administrative issuances which bear on the terms of appointment of staff members should be drafted in clear, concise language free from ambiguities, with a view to avoiding, as far as possible, misunderstandings as to the nature and intent of the provisions concerned and, consequently, to preventing the emergence of disputes.

179. A number of steps should accordingly be taken further to clarify rules, regulations and all administrative issuances bearing on the terms of appointment of staff, develop a corporate culture of trust, dialogue and communication, enhance mechanisms for the early resolution of disputes and provide disincentives which will limit litigation.

180. If the concept of "administration of justice" is understood in its widest sense, its improvement should start with the prevention of disputes which may eventually lead to conflicts between staff and managers, or between staff and the administration. Such conflicts often stem from diverging interpretations or understandings of staff rules and regulations or administrative issuances, which in many cases are too complex, poorly phrased and riddled with inconsistencies.

181. This has been underlined for over twenty years by expert groups entrusted with reviewing the efficiency of the administrative functioning of the United Nations such as, for instance, the Group of High-Level Intergovernmental Experts to review the Efficiency of the Administrative and Financial Functioning of the United Nations, which called for the "personnel management of the Organization to be based upon clear, coherent and transparent rules" and for "present inconsistencies and ambiguities to be eliminated".[33] The General Assembly also requested the Secretary-General to expedite the simplification and streamlining of all personnel rules and procedures in order to make them transparent and easier to apply.[34]

182. For a start, and as recommended by the ACABQ as early as 1985,[35] those aspects of staff administration which give rise to an inordinate number of appeals should be identified, with a view to simplifying and clarifying the relevant rules and regulations. Furthermore, all staff regulations and rules and related administrative issuances should be continuously and systematically updated.

183. The Inspectors note the efforts undertaken by the Secretariat in this regard, and in particular the Revisions to Article I of the Staff Regulations adopted by the General Assembly in 1998 together with revisions to Chapter I of the 100 series of the Staff Rules.[36] The inclusion of a commentary designed to explain individual provisions and to help staff members to understand each provision by placing it into context is also a useful step.

184. The Secretariat has also issued Secretary-General's Bulletin ST/SGB/1997/1 on procedures for the promulgation of administrative issuances, of 28 May 1997, which aims at implementing the recommendation that all rules should be written in a clear language. Furthermore, recent reports of the Secretary-General on amendments to the Staff Rules contain revised rules on such issues as education grant, accompanied shipments, repatriation grant, mobility and hardship allowance and others, are formulated in a clearer and simpler language.

185. Moreover, the Secretariat keeps under review all rules at present contained in the Personnel Manual with a view to streamlining and reissuing them in a consolidated form satisfying the requirement of ST/SGB/1997/1 for clarity and conciseness. Lastly, the Secretariat's intention, which the Inspectors find quite commendable, is to make these rules available on-line.

186. The Inspectors are also aware of the efforts undertaken by the Secretariat over the past few years to train both staff and managers in conflict-resolution techniques. These efforts should be actively pursued and be complemented by programmes aiming at better acquainting staff with their rights and obligations. Such programmes must be an integral part of any induction syllabus.

187. In the Inspectors' view, no effort should be spared to replace the present climate of confrontation by a culture of dialogue and communication. In particular, the performance appraisal system (PAS) introduced in the Secretariat over the past few years should help in this regard, requiring, as it does, regular discussions between staff and managers, and providing objective gauges to assess staff performance.

188. Staff must nevertheless be further encouraged to bring to the attention of their supervisors any administrative issue which they deem controversial before approaching third parties. Managers, for their part, should be given increased guidance as to the correct interpretation and implementation of staff rules and regulations and administrative instructions.

C. Access of field-based staff to recourse instances: *video-conferencing*

189. The access of field-based staff, including staff serving at peace-keeping and other missions, to all dispute-settlement and recourse instances, as well as to proper legal advice on their terms of appointment and conditions of service and proper representation before appellate bodies, if appropriate, should be ensured at all times. The Inspectors recommend increased use of information technology, including *video-conferencing*, to facilitate the access of field-based staff to dispute-settlement instances and appellate bodies.

NOTES

1. Joint Inspection Unit (JIU) Work Programme for 1999 (A/53/841), 23 February 1999.

2. Federation of International Civil Servants' Associations (FICSA), *Studies and Policies No. 4 - Recourse Procedures in the Organizations of the United Nations System*, Geneva, 1977.

3. *Feasibility of establishing a single administrative tribunal - Report of the Meeting of Legal Advisers* (ACC/1970/70) of 27 September 1979:.

4. A/C.5/37 of 26 October 1982, paragraph 4.

5. *Administrative and budgetary co-ordination of the United Nations with the Specialized Agencies and the International Atomic Energy Agency - Feasibility of establishing a single administrative tribunal.* (A/C.5/39/7) of 20 December 1984

6. A/40/471 of 23 July 1985, paragraph 70 *et seq.*

7. A/41/640

8. A/43/704, of 13 October 1988.

9. A/C.5/44/1 of 20 June 1989 and A/C.5/44/1 of 19 September 1989.

10. A/C.5/45/11, of 19 October 1990.

11. A/C.5/49/13, of 8 November 1994.

12. A/C.5/49/60, of 18 March 1995 (See also A/C.5/49/60/Add. 1, of 9 June 1995, for the financial implications).

13. A/C.5/50/52

14. *Ibid.*

15. Proposed programme budget for the biennium 2000-2001, (A/54/6) Section 27 C, Office for Human Resources Management (OHRM)

16. ST/IC/11991/35

17. ST/SGB/1998/19.

18. See also *Report of the Nineteenth Session of the Consultative Committee on Administrative Questions (Personnel and General Administrative Questions)* (ACC/1999/5), of 21 April 1999.

19. Office of Internal Oversight (OIOS), Investigations Section, Manual, Operating Procedure A.

20. Office of Internal Oversight (OIOS), Investigations Section, Manual, Operating Procedure A.

21. Formerly Article 11, Statute of UNAT, deleted pursuant to General Assembly resolution 50/54, of 11 January 1995.

22. Statute of the ILOAT, Article XII

23. A/40/471, para. 3, p. 6.

24. See Annex III

25. Federation of International Civil Servants' Associations (FICSA), *Studies and Policies No. 4 - Recourse Procedures in the Organizations of the United Nations System*, Geneva, 1977.

26. Administrative Committee on Coordination, *Summary of Conclusions of the Administrative Committee on Coordination at its Regular Session of 1999, United Nations Headquarters, New York, 29 and 30 October 1999* (ACC/1999/20), 11 November 1999.

27. *Ibid.*

28. JIU, *Administration of Justice in the United Nations* (JIU/REP/86/8, A/41/640)

29. *Ibid.*, para. 57. The quotation from the report contains, in turn, a quotation from the report of the Consultant to the Administrative Management Service (AMS), Mr Gurdon Wattles, entitled *Review of Methods and Procedures for Administrative Reviews, Appeals and Processing of Cases for the Administrative Tribunal*, November 1981.

30. Legal Advisers of the United Nations System, *Note on the advisability of introducing a second-tier appellate mechanism to enhance the administration of justice in the United Nations system*, Rome, 1999.

31. *Ibid., Annex, Note by the Legal Adviser of UNESCO*, Rome, 1999.

32. Administrative Committee on Coordination, *Summary of Conclusions of the Administrative Committee on Coordination at its Regular Session of 1999, United Nations Headquarters, New York, 29 and 30 October 1999* (ACC/1999/20), 11 November 1999.

33. Report of the Group of High-Level Intergovernmental Experts to review the Efficiency of the Administrative and Financial Functioning of the United Nations, Official Records of the Forty-First Session of the General Assembly, Supplement No. 49 (A/41/49).

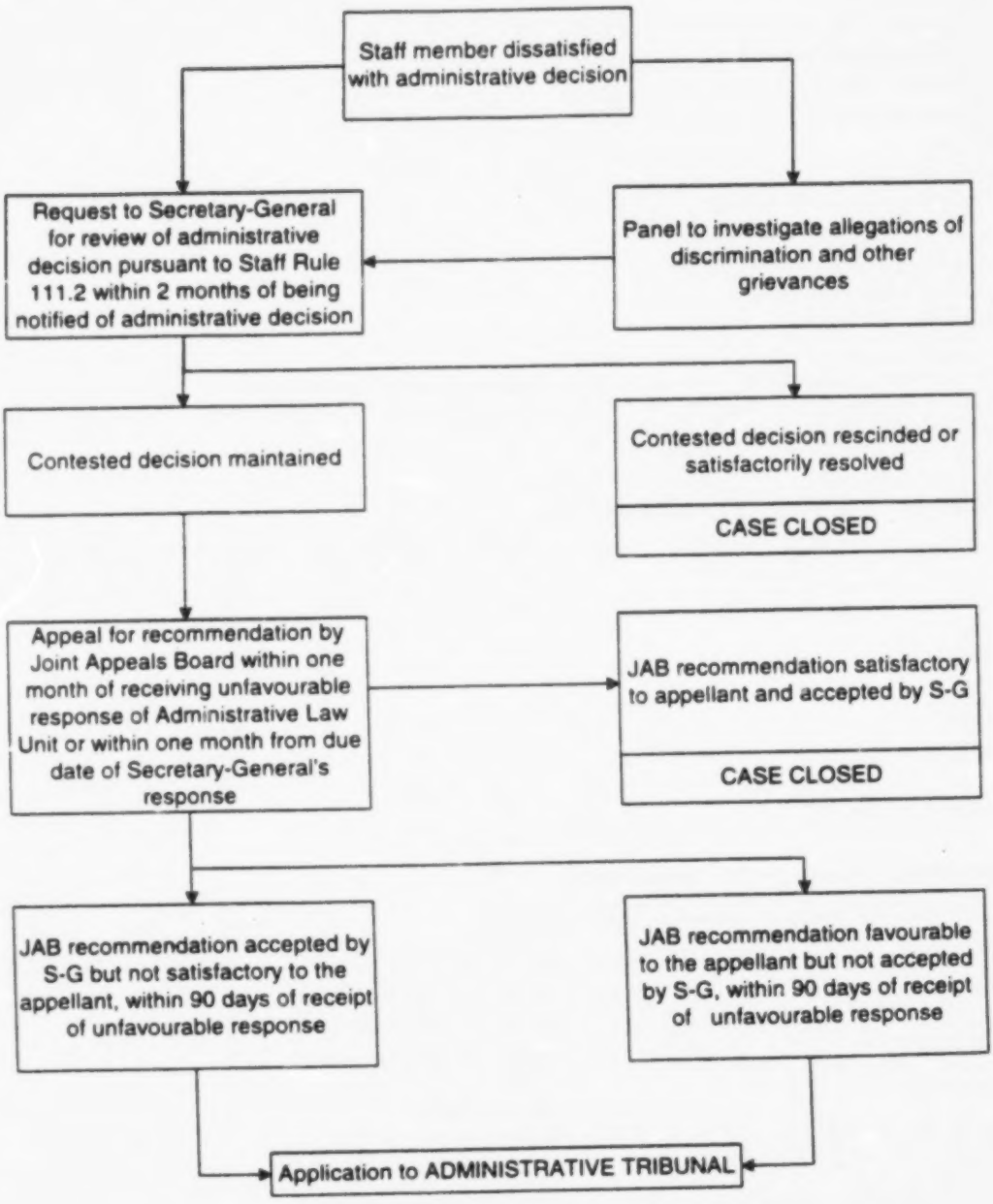
34. A/RES/51/226, Section II, paragraph 7.

35. Official Records of the General Assembly, Fortieth Session, Supplement No. 7 (A/40/7)

36. See General Assembly Resolution 52/252 on Revisions to Article I of the Staff Regulations and Chapter I of the 100 series of the Staff Rules of the United Nations (A/RES/52/252) and Secretary-General's Bulletin ST/SGB/1998/19, *Status, Basic Rights and Duties of United Nations Staff Members*.

ANNEX I

CHART SHOWING OPTIONS AVAILABLE TO STAFF WISHING TO ACT AGAINST ADMINISTRATIVE DECISIONS


Staff member dissatisfied with administrative decision
Request to Secretary-General for review of administrative decision pursuant to Staff Rule 111.2 within 2 months of being notified of administrative decision
Panel to investigate allegations of discrimination and other grievances
Contested decision maintained
Contested decision rescinded or satisfactorily resolved
CASE CLOSED
Appeal for recommendation by Joint Appeals Board within one month of receiving unfavourable response of Administrative Law Unit or within one month from due date of Secretary-General's response
JAB recommendation satisfactory to appellant and accepted by S-G
CASE CLOSED
JAB recommendation accepted by S-G but not satisfactory to the appellant, within 90 days of receipt of unfavourable response
JAB recommendation favourable to the appellant but not accepted by S-G, within 90 days of receipt of unfavourable response
Application to ADMINISTRATIVE TRIBUNAL

(Judgement and binding decision)

ANNEX II
STATISTICAL INFORMATION ON JOINT APPEALS BOARD CASES
(as provided by the four duty stations)

United Nations Headquarters, New York (as of 10 December 1999)

Total no. of open cases	137
Total no. of cases filed in 1997	72
Total no. of cases filed in 1998	55
No. of cases carried over (filed before 1999)	73
Total no. of cases filed in 1999	64
No. of cases disposed of in 1999	43
(a) reports	37
(b) no reports	6
Suspension of action cases disposed of in 1999	12
No. of reports sent to the Secretary-General in 1999	49
No. of reports sent to the Secretary-General in 1998	37
Pending cases - observations received (backlog in 1999)	43*
Pending cases for 1998 (backlog in 1998)	50

* Out of these 43 cases, 31 cases are at different phases of the JAB proceedings. For some of them, draft introductions have been prepared, but n panels have been constituted. For some others, the final reports have been submitted to the Panel members for their approval and signature.

United Nations Office at Geneva (as at 31 December 1999)

	1990	*1991*	*1992*	*1993*	*1994*	*1995*	*1996*	*1997*	*1998*	*1999*
Appeals filed	25	21	19	24	18	21	18	24 .	28	28*
Appeals disposed	13	16	19	12	24	32	23	20	28	29
Appeals carried over	38	43	43	55	49	38	33	37	37	36
Appeals without report	5	7	4	3	5	6	3	10	10	3
Appeals with report	8	9	15	9	19	27	20	10	18	26
Suspensions of action filed	0	0	1	9	1	2	6	12	4	6

* Seven cases filed by the same Appellant

United Nations Office at Vienna (as at 21 October 1999)

	1993	*1994*	*1995*		*1996*	*1997*	*1998*	*1999*
Appeals filed	7	2	3	Appeals filed	3	2	11	2
Withdrawn/settled/abandoned	4	1	0	Requests for suspension of action	3	3	0	2
Active cases	1	1	3	Reports completed on appeals	3*	0	4***	1
Reports completed	2	0	0	Reports completed on suspension of action	2	2	0	1
				Appeals pending	2	3	2	1
				Appeals withdrawn	0	1**	0	0
				Appeals referred to another JAB	0	1	0	0
				Requests for suspension of action withdrawn	1	0	0	0
				Cases settled through conciliation	0	0	2	1
				Cases currently under conciliation	0	0	2	2****

* Including one on four similar appeals
** Discontinued upon decease of Appellant
*** Including one on eight similar appeals
**** Including the case for which a request for suspension of action was filed

ANNEX II (cont.)

United Nations Office at Nairobi (as at 31 December 1999)

	1997	*1998*	*1999*
Appeals filed	4	8	7
Suspensions of action filed	1	1	2
Appeals carried over	4	10	10
Appeals with report	0	2	5
Cases withdrawn	0	0	2
Reccmmendations accepted by USG	0	2	3*
Recommendations rejected by USG	0	0	1

* USG has not given his decision in one case